

In the Matter of)
) CC Docket No. 01-92
Inter-carrier Compensation.)

² NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

submitted in this proceeding.³ The FBM was presented to the Commission just prior to the February 1, 2007 date set for the filing of reply comments on the so-called Missoula Plan.⁴ In initial and reply comments, NASUCA -- along with many other parties -- had forcefully opposed the Missoula Plan, as **not** being a solution to the problem of intercarrier compensation, and being a “solution” that required consumers to pay \$6.9 billion in order to make up for a \$6 billion revenue loss to incumbent local exchange carriers (“ILECs”).⁵

In the initial comments on the FBM, NASUCA stated:

It is notable that the FBM is proposed as a means to correct one of the glaring inequities of the Missoula Plan, that being “the effects of the Plan on ‘early adopter’ states, i.e., those states that have already taken action to substantially reduce intrastate access charges.” The Missoula Plan as originally presented “solved” the problem of intercarrier compensation by substantially reducing intercarrier payments, but replaced every dollar in lost revenue **and more** with payments from the subscriber line charge (“SLC”) and from the federal universal service fund (“USF”). The FBM “solves” **this** problem by adding an additional \$800 million to the federal USF! This eases some of the burden on “early adopter” states, but does so by increasing the burden on everyone else. Thus the cost to consumers of reducing intercarrier rates by \$6 billion rises to over \$7 billion under the FBM.⁶

³ See ex parte communication (January 30, 2007) from the Missoula Plan Supporters and the Indiana Utility Regulatory Commission, Maine Public Utilities Commission, Nebraska Public Service Commission, Vermont Department of Public Service, Vermont Public Service Board and Wyoming Public Service Commission (“January 30 ex parte”). (Henceforth, unless specifically noted, references to the January 30 ex parte are to the portion of the document following the cover letter that is labeled “Supporting Comparability Through a Federal Benchmark Mechanism.”) In a February 5, 2007 filing, two errors in the attachment to the January 30 filing were corrected.

⁴ See ex parte communication (July 24, 2006) from the NARUC Task Force on Intercarrier Compensation (“NARUC Task Force”), with “Missoula Plan” attached.

⁵ See NASUCA Initial Comments on the Missoula Plan (October 25, 2006); NASUCA Reply Comments (February 1, 2007).

⁶ NASUCA Initial Comments on the Federal Benchmark Mechanism (March 19, 2007) at 2-3 (footnotes omitted).

The other parties' comments on the FBM only serve to reinforce NASUCA's view.

As with the comments on the Missoula Plan itself, the comments on the FBM show the breadth of opposition to this amendment to the plan.⁷ Opposition comes from consumer representatives,⁸ state commissions,⁹ large telephone companies,¹⁰ small telephone companies,¹¹ competitive telephone companies,¹² and wireless associations.¹³ A few commenters continue to oppose the Missoula Plan, but support the FBM as an amendment if the Plan were to be approved.¹⁴ Even some of those who supported the Missoula Plan in concept have concerns with the FBM.¹⁵ Others propose alternatives to the FBM.¹⁶ Unconditional support came only from a few of the signatories to the FBM

⁷ Due to the issuance of the Public Notice extending the comment date one business day before the original due date for the comments, many of the comments (including NASUCA's) were filed on that original due date).

⁸ NASUCA, New Jersey Division of Rate Counsel ("NJDRRC").

⁹ Five State Members of the Mid-Atlantic Conference of Regulatory Utility Commissioners ("Five MACRUC States"); New Jersey Board of Public Utilities ("NJBPUC"); New York State Department of Public Service ("NYDPS"); Pennsylvania Public Utility Commission ("PaPUC"); Public Utilities Commission of Ohio ("OhPUC"); Virginia State Corporation Commission Staff ("VaSCC").

¹⁰ Qwest Communications International, Inc. (Qwest"); Verizon.

¹¹ Frontier Communications ("Frontier").

¹² Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications, LLC ("Joint CLECs"); National Cable & Telecommunications Association ("NCTA").

¹³ CTIA- The Wireless Association@; Sprint Nextel Corporation ("Sprint").

¹⁴ Wyoming Public Service Commission ("WyPSC").

¹⁵ Alexicon Telecommunications Consulting ("Alexicon"); Minnesota Independent Coalition ("MIC"); Texas Statewide Telephone Cooperative, Inc. ("TSTCI").

¹⁶ Public Service Commission of Wisconsin ("WisPSC").

and their cohorts.¹⁷

Rather than reciting the various numerous and valid points raised by the Missoula Plan/FBM opponents, these reply comments will focus on the errors in the comments of the FBM supporters. Before doing so, however, it would be good to place all this into context with a quotation from the comments of the Five MACRUC States:

The proposed amendment does nothing to make the Missoula Plan more palatable, in fact it makes the Plan worse. This proposed amendment is an attempt to increase the current subsidy flow from the end-users in net contributor states to carriers in more rural states with incidental benefits for consumers in those states.¹⁸

And to repeat NASUCA's earlier statement in this regard, "[A]ll such attempts to rescue the Missoula Plan are a forlorn hope. No amount of make-over can disguise the plan's rotten foundations."¹⁹

II. RESPONSE TO COMMENTS OF FBM SUPPORTERS

A. Blackfoot comments

To begin with an example, Blackfoot says it supports the FBM because it eases the burden of the Missoula Plan on consumers who already have high rates.²⁰ Blackfoot shows, however, that the FBM increases the burden on other states to prevent additional

¹⁷ Blackfoot Telecommunications Group ("Blackfoot"); Dubois Telephone Exchange, Inc., Range Telephone Cooperative, Inc., and RT Communications, Inc. ("Range"); GVNW Consulting, Inc. ("GVNW"); Nebraska PSC ("NebPSC"); Nebraska Rural Independent Companies ("NRIC"); Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"); South Dakota Telecommunications Association ("SDTA"); United States Telecom Association ("USTA"); Western Telecommunications Alliance ("WTA").

¹⁸ Five MACRUC States Comments at [3].

¹⁹ NASUCA Reply Comments at 2, n.3.

²⁰ Blackfoot Comments at 3.

rates increases for Blackfoot's customers, and that its high end-user rates did not come about as a result of a reduction in intrastate access charges. Instead, Blackfoot reduced its intrastate access *revenues* by expanding its customers' local calling area. At least in that situation the customers got something for their rate increases,²¹ unlike the more typical rate rebalancing where a decrease in access charge rates leads directly to an increase in end users' rates without any change to their service. And this is in contrast to the Missoula Plan (with or without the FBM) where the majority of customers across the country will see increases in their rates (either directly through SLCs or indirectly through USF assessments) without any offsetting benefit. The situation described by Blackfoot also highlights how the FBM effectively assumes that all states are alike -- in terms of actions regarding access charges and end-user rates -- where the exact opposite is true.

Finally, Blackfoot argues that the FBM is consistent with the principles of section 254 of the Act.²² That may or may not be true -- NASUCA would submit that it is not -- but it does emphasize that addressing the issues of the FBM as a part of the Missoula Plan is fundamentally wrong. Universal service issues should be addressed as part of the Commission's -- and the Joint Board's -- deliberations on universal service, not as an attempt to rationalize or repair a flawed "solution" on intercarrier compensation.

²¹ Similarly in Ohio a few years back, Sprint (now Embarq) and Verizon added end user charges to make up for part of a reduction in intrastate access charges, but each expanded customers' local calling areas so that the detriment was balanced out. See *In the Matter of the Commission's Investigation into the Modification of Intrastate Access Charges*, PUCO Case No. 00-127-TP-COI, Opinion and Order (June 28, 2001).

²² Blackfoot Comments at 4-5.

B. OPASTCO comments

OPASTCO asserts that “[s]wift adoption of the Missoula Plan is necessary because it provides carriers with a more rational and stable means of recovering network costs in an emerging broadband environment.”²³ “Rational,” as used by OPASTCO, is clearly in the eye of the beholder: Is it rational to guarantee to carriers a level of **revenues and more** by first, extracting most of those revenues through non-bypassable customer charges and second, extracting the rest of those revenues from consumers in other states through the USF? NASUCA submits that it is not rational; it is not reasonable; and it is certainly not fair.²⁴ The “more equitable result” produced by the FBM comes only by increasing the burden on consumers in other states. Finally, the current relationship between the level of access charge revenues and “network costs” is tenuous at best.

C. USTA comments

USTA argues that failure to include “an early adopter mechanism” -- such as the bare bones early adopter proposal in the original Plan, or the FBM -- “could have undermined the goal of [competitive] neutrality” espoused by the Commission and the Missoula Plan supporters.²⁵ The fact that the Restructure Mechanism (“RM”) in the original plan benefited carriers most in states that had not reduced intrastate access

²³ OPASTCO Comments at 2.

²⁴ For the rural carriers that are OPASTCO members, the latest National Exchange Carrier Association data continue to show long-distance minutes of use (“MOU”) that are flat year-to-year. By contrast, the Missoula Plan is even more unfair for customers of the larger carriers, whose MOU continue to decline.

²⁵ USTA Comments at 6.

charges and least in states that **had** done so²⁶ has little to do with competitive neutrality, unless one is looking at competition **between states**. As shown in many of the comments, by intending to provide support only for ILECs, the plan is about as far from “competitively neutral” as it is possible to be.

Another error in USTA’s comments is its statement that the rate benchmark in the FBM “tracks total residential revenues per line.”²⁷ Of course, the rate benchmark includes only basic rates plus mandatory EAS rates plus interstate and intrastate SLCs plus intrastate USF per-line.²⁸ Vertical and advanced services, and inter- and intra-state toll -- all significant sources of revenue for the telephone companies -- are not included in the FBM’s calculation.

USTA also says that “the FBM accomplishes its goals both legally and without exorbitant costs.”²⁹ Neither the FBM ex parte itself nor USTA’s comments contain any description of the legal support behind the mechanism. And “exorbitancy,” like “rationality,” is clearly in the eye of the beholder: an additional \$800 million to get a few states to buy in to the \$6.9 billion Missoula Plan is outrageous from NASUCA’s perspective.³⁰

²⁶ See id. at 5.

²⁷ Id. at 7.

²⁸ FBM at 3.

²⁹ USTA Comments at 8.

³⁰ This also ignores the arbitrary nature of the FBM’s \$25.00 High Benchmark Target. See NYDPS Comments at 4 (noting the Commission’s 2003 rate benchmark of \$32.28).

D. SDTA comments

SDTA states:

The FBM recognizes the different efforts that states have made to reduce their intrastate access rates. States that have reduced their intrastate access rates have generally increased end-user rates for basic local exchange service, instituted a state universal service support fund, or taken both measures.³¹

Yet the FBM is based only on the rate benchmarks. And the FBM transfers support to the states with “high” rates³² from states that have taken other actions to reduce access charges, such as New Jersey, Ohio and Pennsylvania.³³

E. NRIC comments

Despite the continual references in other FBM supporters’ comments about how the FBM is designed to ensure comparability of rates,³⁴ NRIC explicitly points up a clear contradiction in this “universal service” purpose for the FBM and the underlying RM, stating, “Given the fact that the FBM targets funding to states that have previously reduced state access charges, it is appropriate to ... conclude that such targeted funding must be considered an access rate element under Section 201.”³⁵ As previously discussed by NASUCA among others, this position is taken to avoid the USF portability requirements ... but fails to account for the fact that “access elements” cannot be

³¹ SDTA Comments at 2.

³² See footnote 28.

³³ See NJBPU Comments at 8; OhPUC Comments at 8 (see also footnote 21, *supra*); PaPUC Comments at 3.

³⁴ See, e.g., Blackfoot Comments at 4-5, OPASTCO Comments at 3-4, Range Comments at 7, SDTA Comments at 3.

³⁵ NRIC Comments at 4.

collected through the USF assessment process, which is key to both the RM and the FBM.³⁶ There is the further problem that, as discussed herein, the FBM is not in fact targeted to states that have actually reduced intrastate access charges, focusing instead on states with high end-user rates.

F. Other comments

Other of the comments contain little substance. For example, all that can really be gleaned from Range's comments is the statement that the FBM "ensures that consumers in early adopter states are not unduly harmed by the overall implementation of the Plan."³⁷ Of course, the FBM does so by increasing the overall harm to consumers in other states, which is one of the key reasons to reject the entire Missoula Plan. Further, as pointed out in NASUCA's initial comments and here, the FBM has no necessary connection to whether a state is actually an "early adopter" -- that is, a state that reduced its access charges and increased end user rates and/or added an intrastate USF.³⁸ The FBM considers only rates, and does not require any particular level of reductions in access charges.

GVNW's comments state that "[t]he initial Missoula Plan filing did not include any mechanism to recognize that a number of states had previously taken steps to reduce intrastate access rates."³⁹ Yet the ex parte describing the FBM notes that "[t]he Missoula Plan proposes a federal Early Adopter Fund of at least \$200 million...." And GVNW's

³⁶ NASUCA Comments (October 25, 2006) at 60-62.

³⁷ Range Comments at 8; see also WTA Comments at 2.

³⁸ See USTA Comments at 7.

³⁹ GVNW Comments at 4.

own reply comments on the Missoula Plan (pre-FBM) states that the Plan “[p]rovides an approach to achieve equity between the state jurisdictions that have already commenced with intercarrier compensation reform and those that have not.”⁴⁰

The NebPSC was a signer of the FBM ex parte. Thus it should not be surprising to see that the NebPSC supports the FBM. But it is surprising for the NebPSC to claim that its creation of the Nebraska USF (“NUSF”) -- which was created to allow Nebraska carriers to recover revenues lost from intrastate access charge reductions⁴¹ -- “has reduced the burden on the Federal USF.”⁴² Given the basis for the federal rural high-cost fund, there does not appear to be any connection between intrastate USF collections and the level of support received from the federal fund.

III. CONCLUSION

As shown repeatedly in NASUCA’s and others’ comments, both on the Missoula Plan itself and on the FBM, WTA’s assertion that “the Missoula Plan, as modified by the FBM, constitutes an intricate and workable compromise among a broad cross-section of affected carriers that addresses many of the problems of interconnection and intercarrier compensation in both the existing and future telecommunications industry”⁴³ is simply incorrect -- except with regard to intricacy. The Missoula Plan, either on its own or as modified by the FBM, must be rejected.

⁴⁰ GVNW Reply Comments (February 1, 2007) at 5.

⁴¹ NebPSC Comments at 3.

⁴² Id.

⁴³ WTA Comments at 3.

Respectfully submitted,

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